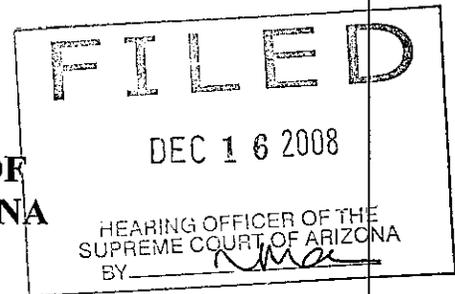


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**BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA**



**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

No. 08-0051

**Craig J Simon,
Bar No. 018920**

HEARING OFFICER'S REPORT

Respondent.

(Assigned to Hearing Officer 9R,
Robert J. Stephan, Jr.)

PROCEDURAL HISTORY

1. Probable cause was found in this matter on July 23, 2008. An amended probable cause order was issued by the Panelist on August 27, 2008. Prior to the filing of any formal complaint, the parties negotiated a settlement, filing Direct Consent documents on November 6, 2008.
2. This matter was assigned to the undersigned Hearing Officer on November 7, 2008.

FINDINGS OF FACT

3. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 16, 1998.

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4. In or about December of 2002, Laurel Martlage (“Ms. Martlage”) retained Respondent to defend her in a civil action brought by her former partner (“the first case”).
5. Respondent was the primary attorney handling this first case.
6. From December of 2002 through February of 2006, Respondent engaged in a sexual affair with Ms. Martlage.
7. The majority of Respondent and Ms. Martlage’s sexual encounters occurred in early 2003, with the last isolated encounter occurring in February of 2006.
8. In or about September of 2003, Ms. Martlage retained Respondent’s firm to defend her in a civil action brought by her neighbor (“the second case”).
9. Respondent was not the primary line attorney handling this second case, but did have supervisory authority over the case as well as some limited involvement in the actual handling of the case.
10. In or about November of 2003, the second case against Ms. Martlage proceeded to trial, with the plaintiffs’ requested relief being denied, but an injunction against harassment being affirmed as to Ms. Martlage.
11. In or about April of 2004, a contempt hearing was held for Ms. Martlage’s alleged violation of the injunction against harassment.

1 12. Respondent's firm continued to represent Ms. Martlage for these
2 contempt proceedings.

3
4 13. On or about April 6, 2005, the second case against Ms. Martlage was
5 ultimately dismissed by the Court.

6 14. On or about August 25, 2005, the first case against Ms. Martlage's was
7 dismissed by the Court, effectively ending Respondent's representation
8 of Ms. Martlage.

9
10 15. With respect to both the first and second cases described in Paragraphs
11 4-14, the affair identified above did not result in any prejudice to the
12 legal interests of Ms. Martlage, the opposing party, the court, or any
13 other affected person or entity.
14

15
16 **CONCLUSIONS OF LAW**

17
18 16. Respondent engaged in professional misconduct that violated duties
19 owed to his client by representing a client when there was a significant
20 risk that the representation of the client would be materially limited by a
21 personal interest of Respondent.
22

23 17. This conduct violated Rule 42, Ariz.R.Sup.Ct., ER 1.7.

24 18. Respondent's conduct in violation of ER 1.7 implicates *Standard 4.32*,
25 which provides that "(s)uspension is generally appropriate when a

1 lawyer knows of a conflict of interest and does not fully disclose to a
2 client the possible effect of that conflict, and causes injury or potential
3 injury to a client.”
4

5 19. By engaging in an affair with his client, Respondent knowingly engaged
6 in a potential conflict of interest.

7 20. Ms. Martlage was not injured by Respondent’s actions in that he was
8 ultimately successful in his representation of her. She was however,
9 subject to potential injury had the relationship been discovered or had it
10 adversely affected the lawyer-client relationship.
11

12 21. The presumptive sanction in this matter appears to be suspension.
13

14 22. There are no aggravating factors to be considered in this case.

15 23. The Following mitigating factors are applicable:

16 a. 9.32(a) *Absence of Prior Disciplinary Record*

17 i. The Respondent has no disciplinary record.
18

19 b. 9.32(3) *Full and Free Disclosure to Disciplinary Board*

20 i. The Respondent cooperated with the State Bar.
21

22 c. 9.32(g) *Character or Reputation*

23 i. The Respondent has a good character and strong
24 reputation in the local community.

25 24. The Following proportional cases are persuasive in this matter:

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- a. *In re Pearlstein*, SB-03-0155 (2004), The lawyer was suspended for 60 days with 2 years of probation for subjecting a client to unwelcome commentary of a sexual nature. In a second matter, the lawyer failed to keep his client informed as to the matter, failed to act with diligence, and failed to properly supervise his staff. ERs 1.4, 1.7, 1.15, 1.16 and 5.3.
- b. *In re Marquez*, SB-03-0072 (2004), The lawyer was suspended for 30 days with 1 year of probation for making unwelcome sexual comments and unwelcome touching of an opposing party who was representing herself pro per. The lawyer denied the conduct until confronted with a tape recording of the incident. ERs 1.7, 8.1 and 8.4.
- c. *In re Spence*, SB-05-0026 (2005), The lawyer was suspended for 30 days and received probation for making inappropriate and sexually explicit comments to clients. The lawyer also disobeyed an obligation under the tribunal, disobeying a court order. ERs 1.7, 3.4, 8.4, Rule 41(g) and 51(e).
- d. *In re Moore*, SB-02-0043 (2002), The lawyer was Censured for making persistent comments and extending invitations of a

1 sexual nature to his client during the course of the
2 representation in violation of ER 1.7 and Rule 41(g).

3
4 25. Based on Respondent's conduct, the ABA Standards, the applicable
5 aggravators and mitigators, as well as past comparable cases, this
6 Hearing Officer determines that the proposed sanction submitted by the
7 parties is appropriate.

8
9 26. This Hearing Officer recommends the Tender of Admissions be accepted
10 and the following disciplinary sanctions be imposed:

- 11 a. Respondent shall receive a suspension of 60 days;
- 12
13 b. Respondent shall pay all costs incurred by the State Bar in
14 bringing these disciplinary proceedings within thirty (30) days
15 of the Supreme Court's Final Judgment and Order. In addition,
16 Respondent shall pay all costs incurred by the Disciplinary
17 Commission, the Supreme Court, and the Disciplinary Clerk's
18 office in this matter.
- 19
20 c. Respondent shall be placed on probation for a period not to
21 exceed one year under the following terms and conditions:
- 22
23 i. The probation shall begin to run at the time of
24 acceptance of the Consent Agreement by this Hearing
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Officer, and will conclude upon completion of the terms of probation as listed below.

ii. Respondent shall contact the State Bar of Arizona's Member Assistance Program to participate in an evaluation and referral to services as needed.

Respondent shall cooperate with any recommendations made by the Member Assistance Program. Respondent shall be responsible for the cost of the evaluation and any subsequent referral programs.

iii. Respondent's probation shall terminate upon successful completion of MAP's recommendations, if any.

iv. Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.

v. In the event that Respondent fails to comply with any of the foregoing probation terms and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing entity pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to

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by: 